



COUNCIL AGENDA: 06/15/10

ITEM: 3.3

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Alex Gurza

SUBJECT: SEE BELOW

DATE: June 4, 2010

Approved

Date

6/4/10

SUBJECT: APPROVAL OF IMPLEMENTATION OF TERMS CONTAINED IN THE CITY'S LAST, BEST AND FINAL OFFER TO THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 332, (IBEW)

COUNCIL DISTRICT: N/A
SNI AREA: N/A

RECOMMENDATION

Adoption of a resolution approving the implementation of the terms of the City's Last, Best and Final Offer for employees represented by the International Brotherhood of Electrical Workers, Local No. 332, (IBEW), effective June 27, 2010.

OUTCOME

Adoption of the resolution and authorization to implement the terms contained in the City's Last, Best and Final Offer for employees represented by IBEW, effective June 27, 2010.
Implementation of terms does not result in implementation of a Memorandum of Agreement (MOA).

BACKGROUND

In November 2009, the City Council in open session approved a goal of reducing the total ongoing employee compensation by 5%. In March 2010, the City Council approved the Mayor's Budget Message which expanded the goal to include an additional 5% in personnel cost savings, including ongoing or one-time savings. As a result, the goal was to achieve a total compensation reduction of 10%. "Total compensation" is the total cost to the City of pay and benefits, including base pay, retirement contributions, health insurance and other benefits. Total compensation is calculated using budgeted salary and fringe benefit costs for the bargaining unit. It does not include overtime that an individual employee may earn.

The City of San Jose had a labor contract with the International Brotherhood of Electrical Workers, Local No. 332 (IBEW), which expired on March 6, 2010. IBEW currently represents approximately

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80 full time budgeted positions. This unit includes employees such as Electricians, Senior Electricians and Electrician Supervisors.

IBEW was first contacted to begin negotiations in December 2009 and negotiations commenced in December 2009. The City and IBEW have met approximately seventeen (17) times. The parties reached impasse on March 2, 2010, and began the impasse procedures under Employee-Employer Relations Resolution No. 39367, which is engaging in mediation.

Subsequently, on March 23, 2010, due to the changed circumstances related to the increased budget shortfall, the City Council approved the Mayor's Budget Message which called for 10% total compensation reduction. Because this change occurred while the City and IBEW were engaged in mediation, the City provided IBEW notice and opportunity to bargain over these changed circumstances. The City and IBEW engaged in additional negotiation discussions regarding the additional 5% total compensation reduction, including incorporating these discussions into the mediation sessions. Unfortunately, the City and IBEW reached impasse again on April 30, 2010.

IBEW again invoked the impasse procedures and on May 14, 2010, the parties engaged in the mediation process. Unfortunately, the parties were unable to reach agreement.

The City provided IBEW with its Last, Best and Final Offer on May 27, 2010, which is attached.

Pursuant to the Meyers-Milias-Brown Act under California Government Code Section 3505.4, if after meeting and conferring in good faith, an impasse has been reached between the public agency and the recognized employee organization, and impasse procedures, where applicable, have been exhausted, a public agency that is not required to proceed to interest arbitration may implement its last, best and final offer, but shall not implement a memorandum of understanding.

IBEW has been notified that this item was being placed on the Council Agenda for implementation of the terms contained in the City's Last, Best and Final Offer for employees represented by IBEW.

ANALYSIS

The following is a summary of the terms contained in the City's Last, Best and Final Offer that would be implemented for employees represented by IBEW:

Wages	Reduce current base pay by approximately 4.40% effective June 27, 2010. This will result in both the top and bottom step of the pay range being reduced by approximately 4.40%.
Freezing of Step/Merit Increases	Each year, employees who are not already at top step are eligible to receive a 5.00% step increase during each fiscal year until the employee reaches top step. Effective June 27, 2010, all IBEW represented employees will have step and merit increases frozen for 26 pay periods. After 26 pay periods, employees represented by IBEW will become eligible for step

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increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

**Healthcare
Cost Sharing**

Currently, the City pays ninety (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee pays ten (10%) of the premium for the lowest priced plan for employee or employee and dependent coverage.

Effective June 27, 2010, the City will pay eighty five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay fifteen (15%) of the premium for the lowest priced plan for employee or employee and dependent coverage.

**Healthcare
HMO Plan Design**

The current HMO Plan Design provides for \$10 office visit co-pay, \$5 generic and \$10 brand name prescription co-pays, and a \$50 emergency room co-pay.

Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. \$25 office visit co-pay
- b. \$10 generic/\$25 brand name prescription co-pay
- c. \$100 emergency room co-pay
- d. \$100 inpatient/outpatient procedure co-pay

**Healthcare
Dual Coverage**

Effective July 1, 2010, employees may no longer be simultaneously covered by City-provided medical and/or dental benefits as a City employee and as a dependent of another City employee or retiree.

**Healthcare
Payment-In-Lieu**

Currently, employees who have other health and/or dental coverage are eligible for a health-in-lieu and/or dental-in-lieu amount of 50% of the City's premium. This results in a formula that increases as the City's costs towards healthcare increases. The current in-lieu amounts are as follows:

	<u>Health In-Lieu</u>	<u>Dental In-Lieu</u>
If eligible for family coverage:	250.31	24.44
If NOT eligible for family coverage:	100.54	24.44

Effective June 27, 2010, employees who qualify for and participate in payment-in-lieu of health and/or dental insurance program will receive the following per pay period:

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	<u>Health In-Lieu</u>	<u>Dental In-Lieu</u>
If eligible for family coverage:	221.84	19.95
If NOT eligible for family coverage:	89.09	19.95

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed NOT eligible for family coverage.

This changes the current formula from a percentage to a fixed dollar amount and will reduce the increases in the health in-lieu program in the future.

Overtime	Employees who work in excess of 40 hours per work week shall be compensated at the rate of time and one-half (1.5) the employee's hourly rate.
Disability Leave Supplement	Reduce maximum supplemental pay benefit from nine (9) calendar months (1560 hours) to six (6) calendar months (1040 hours).
Sick Leave Payout	<p>Effective June 27, 2010, modify calculation of payout from a maximum of 75% of final hourly rate for accruals between 800 and 1200 hours, to a maximum of 60% of final hourly rate for accruals between 400 and 1200 hours for current employees. Distribution of payouts for employees who retire before June 27, 2010, shall be made no later than February 1, 2011.</p> <p>For employees hired on or after June 27, 2010, modify calculation of payout to a maximum of 750 hours at 25% of final hourly rate. Employees who do not retire directly from active City service will no longer be eligible for this benefit.</p> <p>For employees who separate from City service on or before June 26, 2010, and who have 15 years of service, they will receive a sick leave payout upon their retirement at the rate that was available at the time of their separation.</p> <p>Employees would be eligible for only one sick leave payout while employed by the City, including breaks in employment.</p>
Retirement Cost Mitigation	IBEW shall commence meeting and conferring on retiree healthcare benefits for future employees, a medical reimbursement program for future retirees, and pension benefit/costs for current and future employees within 15 calendar days after the City provides notification to IBEW. Any changes to pension costs and benefits for current employees will be in accordance with applicable law.

**Ineligibility if
Offer and Decline
of Modified Duty**

Employees shall be voluntarily separated from City service if the City offers the employee temporary modified duty at identical or similar rate of pay, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he or she is physically qualified. Any such separations will comply with the ADA.

**Additional
Retirement
Contribution**

Effective June 27, 2010 through June 28, 2011, employees will make an additional retirement contribution in the amount of 7.5% of pensionable compensation, and this amount will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability. This additional employee retirement contribution would be in addition to the employee retirement contribution rates as approved by the Federated City Employees' Retirement System Board.

In the event the additional retirement contribution can not be implemented or is ceased for any reason, employees would instead have their base pay temporarily reduced by the equivalent amount of 5% in total compensation.

**Tentative
Agreements**

A tentative agreement was reached between the City and IBEW regarding medical verification. An employee may be required to furnish medical verification or other substantiation any time the employee is required to report to work and was unable to do so due to an illness or injury.

EVALUATION AND FOLLOW-UP

Other than adoptions of retirement contribution ordinances, staff does not anticipate any follow-up actions necessary at this time.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
(Required: Website Posting)
- ☒ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. (Required: E-mail and Website Posting)
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

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This item meets Criterion 2. This memorandum will be posted on the City's website for the June 15, 2010, Council Agenda.

COORDINATION

This memorandum was coordinated with the City Attorney's Office and the City Manager's Budget Office.

COST IMPLICATIONS

These terms meet the goal of a 10% total compensation reduction, including 5% in an ongoing total compensation reduction and another 5% in a one-time total compensation reduction. The implementation of these terms will reduce the total compensation for employees represented by the International Brotherhood of Electrical Workers, Local No. 332 (IBEW). The calculated savings to the City is approximately \$1.0 million in all funds and approximately \$0.4 million in the General Fund. These cost savings are projected based on the Fiscal Year 2010-2011 Base Budget. It should be noted, however, that the actual amount of General Fund and all funds savings would need to be adjusted to reflect the City Manager's 2010-2011 Proposed Operating Budget as amended/approved by the City Council, any associated impacts on revenue from lower overhead or other reimbursements, any adjustments to the cost-recovery fee program, and the actual healthcare costs for each individual employee based upon eligibility, elections for coverage and the associated funding source.



Alex Gurza
Director of Employee Relations

For questions please contact Alex Gurza, Director of Employee Relations, at (408) 535-8150.

Attachments

**2010 IBEW NEGOTIATIONS
LAST, BEST AND FINAL OFFER**

TERM

Term: July 1, 2010 – June 30, 2011

PAY

See Attached (City Proposal #2)

FREEZING STEP INCREASES

See Attached (City Proposal #17)

HEALTH INSURANCE- COST SHARING

See Attached (City Proposal #4)

HEALTH INSURANCE- PLAN DESIGN

See Attached (City Proposal #5)

HEALTH INSURANCE- DUAL COVERAGE

See Attached (City Proposal #6)

HEALTH INSURANCE- HEALTH IN LIEU

See Attached (City Proposal #7)

ELIGIBILITY FOR OVERTIME

See Attached (City Proposal #9)

RETIREMENT COST MITIGATION

See Attached (Proposal #14 and 15)

SICK LEAVE PAYOFF

See Attached (City Proposal #13)

DISABILITY LEAVE SUPPLEMENT

See Attached (City Proposal #19 and 20)

ADDITIONAL 5% TOTAL COMPENSATION REDUCTION

See Attached (City Proposal #24)

**2010 IBEW NEGOTIATIONS
LAST, BEST AND FINAL OFFER**

ALL TENTATIVE AGREEMENTS

- Medical Verification Language

2010 CITY OF SAN JOSE – IBEW NEGOTIATIONS

CITY PROPOSAL #2- PAY

ARTICLE 5 WAGES AND SPECIAL PAY

5.1 Wages

~~5.1.1 Wages 2007/08. Effective March 9, 2008, all salary ranges for employees holding positions in classifications assigned to IBEW Representation Unit 13 shall be increased by 3.0%. The 2007/08 salary ranges are listed in Exhibit I and shall remain in effect through March 7, 2009, unless otherwise changed pursuant to the provisions of this Agreement.~~

~~5.1.2 Wages 2008/09. Effective March 8, 2009, all salary ranges for employees holding positions in classifications assigned to IBEW Representation Unit 13 shall be increased by 3.75%. The 2008/09 salary ranges are listed in Exhibit I and shall remain in effect through March 6, 2010, unless otherwise changed pursuant to the provisions of this Agreement.~~

5.1.1 Effective June 27, 2010, all salary ranges for employees holding positions in classifications assigned to IBEW Representation Unit 13 shall be decreased by approximately 4.40%. The salary ranges are listed in Exhibit I, unless otherwise changed pursuant to the provisions of this Agreement. This will result in the top and bottom of the range of all classifications represented by IBEW being 4.40% lower. All employees will receive a 4.40% base pay reduction.

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CITY PROPOSAL #17- FREEZING STEP STRUCTURE

Effective June 27, 2010, all IBEW represented employees will have step and merit increases frozen for 26 payperiods. After 26 payperiods, employees represented by IBEW will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

CITY PROPOSAL #4- MODIFICATIONS TO COST SHARING FORMULA

5.5 Health Insurance Coverage

5.5.1 ~~Effective at the beginning of pay period seven (7) of payroll calendar year 2008, the City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan up to a maximum of one hundred fifty dollars (\$150) per month. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

~~Effective at the beginning of pay period one (1) of payroll calendar year 2009, the City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.~~

Effective June 27, 2010, the City will pay eighty-five percent (85%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage and the employee will pay fifteen percent (15%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

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CITY PROPOSAL #5- MODIFICATIONS TO HMO PLAN DESIGN

5.5.2 ~~Effective January 1, 2009, c~~Co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$10
- b. Prescription Co-pay shall be increased to \$5 for generic and \$10 for brand name. (The Blue Shield HMO will continue to include \$15 non-formulary drug co-pay.)
- c. Emergency Room Co-pay shall be increased to \$50

5.5.2 Effective July 1, 2010, co-pays for all available HMO plans shall be as follows:

- a. Office Visit Co-pay shall be increased to \$25
- b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name
- c. Emergency Room Co-pay shall be increased to \$100
- d. Inpatient/Outpatient procedure Co-pay shall be increased to \$100

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CITY PROPOSAL #6- HEALTHCARE DUAL COVERAGE

5.5 Health Insurance Coverage

5.5.2 An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

5.6 Dental Insurance

5.6.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

CITY PROPOSAL #7- MODIFICATIONS TO HEALTH IN LIEU

5.5.4 Payment-in-Lieu of Health and/or Dental Insurance Program

5.5.4.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

5.5.4.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward his/her health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution.

5.5.4.3 Effective June 27, 2010, employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive the following per payperiod:

	<u>Health In-Lieu</u>	<u>Dental In-Lieu</u>
<u>If eligible for family coverage:</u>	<u>\$ 221.84</u>	<u>\$ 19.95</u>
<u>If NOT eligible for family coverage:</u>	<u>\$ 89.09</u>	<u>\$ 19.95</u>

5.5.4.4 A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

5.5.4.35 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.5.4.46 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first thirty (30) days of employment, during the annual open enrollment period, or within thirty (30) days of a qualifying event (as defined in the Human Resources Handbook) occurring anytime during the year. Employees who miss the thirty (30) day time limit after a qualifying event will be required to wait until the next open enrollment period to enroll in the payment-in-lieu program. Enrollment in the payment-in-lieu insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.5.4.57 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations, employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced workweek, or employee loses or does not have alternate insurance coverage. An

employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

5.5.4.68 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

5.5.4.68.1 **HEALTH INSURANCE:** To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu-payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

5.5.4.68.2 **DENTAL INSURANCE:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

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CITY PROPOSAL #9- ELIGIBILITY FOR OVERTIME

- 6.6 An employee authorized or required to work overtime who works ~~in excess of his/her scheduled shift on a regular workday, or~~ in excess of forty (40) hours per week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's workweek or shift or from the requirement that such employee fulfill his/her workweek requirement.

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CITY PROPOSALS #14 AND 15- RETIREMENT COST MITIGATION

ARTICLE 25 RETIREE HEALTHCARE FUNDING

(Current Article 25 and subsequent articles to be re-numbered)

- 25.1 The City and the Union agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 25.2 The City and the Union further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Union will support such amendments.
- 25.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.
- 25.4 The City will establish a qualified trust ("Trust") ~~before June 27, 2010~~. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust

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is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

- 25.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

~~9.5 Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Union in writing once during the term of this Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Union has the right to engage in protected concerted activities on the employees' own time provided such protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include strikes, partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes.~~

9.5 Healthcare Cost Mitigation Retirement Benefits Reopener.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2010, and January 19, 2010 within fifteen (15) calendar days of the City providing written notice to IBEW, on retiree healthcare benefits for future employees, and a medical reimbursement program for future retirees, and pension benefit/costs for current and future employees.

9.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Union shall commence no later than fifteen (15) calendar days after the City provides written notice to IBEW January 19, 2010 with or without participation of any other bargaining unit. The City and Union shall negotiate in good faith in an effort to reach a mutual agreement.

9.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. ~~The City agrees~~

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that a unilateral implementation of retiree healthcare benefits for future employees shall not be effective before July 1, 2010.

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CITY PROPOSAL #13- SICK LEAVE PAYOFF

18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement directly from City service or death under one of the following conditions:

18.2.1 Federated Retirement Plan

The employee is:

18.2.1.1 a member of the Federated Retirement Plan, and

18.2.1.2 retired under the provisions cited in the plan, and

18.2.1.3 credited with at least fifteen (15) years of service in this retirement plan, or

18.2.1.4 credited with at least ten (10) years of service prior to a disability retirement.

~~18.2.2 Terminated Employee with Vesting Rights~~

~~The employee has:~~

~~18.2.2.1 terminated his/her service with the City, and~~

~~18.2.2.2 retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and~~

~~18.2.2.3 following such termination, qualifies for retirement and retires under the provisions cited in the code, and~~

~~18.2.2.4 has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.~~

18.2.32 Death During Service

The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

~~18.2.4 Death of Terminated Employee~~

~~The estate of any full-time employee who:~~

~~18.2.4.1 had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the San Jose Municipal Code, and~~

~~18.2.4.2 dies prior to becoming eligible for retirement allowances as cited under provisions of the San Jose Municipal Code, and~~

~~18.2.4.3 has at the time of death credit for at least fifteen (15) years of service in the applicable retirement plan.~~

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~~18.3 Employees who were brought into the City under the consolidation of the communications function will be able to use their County service as credit toward meeting the eligibility requirement for this sick leave pay out per Ordinance 22314.~~

18.43 Payout shall be determined as follows; If a full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specific percent of his/her hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death ~~as follows~~ in accordance with 18.3.1:

18.3.1 Less than 400 hours: Total hours accumulated x 50% of final hourly rate.

_____ or 400 but less than 800 hours: Total hours accumulated x 60% of final hourly rate.

_____ or 800 - 1200 hours: Total hours accumulated x 75% of final hourly rate.

18.3.2 Distribution of payouts to eligible employees, in accordance with 18.3.1 above, who retire before June 27, 2010, shall be made no later than February 1, 2011.

18.4 Effective June 27, 2010, payout shall be determined as follows; If a full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specific percent of his/her hourly rate of pay at the time of retirement or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death in accordance with 18.4.1:

18.4.1 Less than 400 hours: Total hours accumulated x 50% of final hourly rate.

_____ or 400 – 1200 hours: Total hours accumulated x 60% of final hourly rate.

18.5 Employees hired by the City on or after June 27, 2010, if an eligible full-time employee at the time of his/her retirement or death has earned, unused sick leave hours, he/she shall be paid the equivalent of a specific percent of his/her hourly rate of pay at the time of retirement or death, whichever comes first, multiplied by the total number of his/her accumulated and unused hours of sick leave as of the date of his/her retirement or death in accordance with 18.5.1:

18.5.1 0-750 hours: Hours accumulated x 25% of final hourly rate

18.6 Employees who separate from City service on or before June 26, 2010, and who have 15 years of service, shall be eligible for a sick leave payout upon retirement at the rate that was available at the time of their separation.

18.7 Employees are only eligible for one sick leave payout while employed by the City of San Jose, including breaks in employment.

18.78 Use of previously accumulated sick leave hours:

For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of his/her retirement or death, unused sick leave from prior periods of

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employment with the City shall be used. Previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.

CITY PROPOSAL #19 AND 20- DISABILITY LEAVE SUPPLEMENT

ARTICLE 19 DISABILITY LEAVE

19.1 Disability Leave Supplement (DLS)

Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which when added to Worker's Compensation Temporary Disability (WCTD) results in providing employees 85% of their regular base salary.

19.2 Eligibility for Disability Leave Supplement

19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Worker's Compensation Section. In no event may DLS exceed the limit specified in 19.6.

A full-time employee who is required to be absent from work due to a job related injury or industrial illness and who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS. DLS shall be paid only for such period of time as WCTD payments are made. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.

19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability

If the Workers' Compensation Appeals Board of the State of California or any judicial court having jurisdiction should determine that the employee is not entitled to temporary disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one (1) year.

19.4 Ineligible Causes for Disability Leave

An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from any work voluntarily undertaken by employee from which he has been prohibited from engaging in as determined by a City physician, prior to the date of injury.

19.5 Ineligibility if Offer and Decline of Modified Duty

~~DLS shall not be provided~~An employee shall be voluntarily separated from City service if the City offers the employee employment temporary modified duty at identical or similar rate of pay, within the employee's medical limitations, and the employee refuses or fails to accept duty for which he or she is physically qualified.

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19.6 Maximum Term of Disability Leave Supplement

The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 85% of what the employee would have earned at the position from which he or she is disabled for one of the following time periods, whichever is shortest:

- 19.6.1 the time the employee is medically required to be absent due to a work-related injury or illness, after the required three-day waiting period.
- 19.6.2 the period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.
- 19.6.3 ~~nine-six~~ (96) calendar months (274 days) or ~~1560-1040~~ hours), if not continually absent following date of injury.
- 19.6.4 until the employee is determined to be medically permanent and stationary by any physician, and is no longer eligible for DLS.

19.7 Time Limit for DLS Eligibility

After ~~1560-1040~~ hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS five years after the date of the onset of the injury or illness for which he or she is claiming DLS.

19.8 Disability Leave Supplement is in Lieu of Regular Compensation

Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation except if the employee returns to work on a part time basis, wherein the employee may supplement part time earnings with disability leave supplement.

19.9 Requirement of Evidence Proving Temporary Disability

The Director of Human Resources is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness was job related, proof of the disability and how long the injury or illness will last, and proof of other relevant matters as determined by the Director. The Director may require the employee to submit to a medical examination by a physician selected by the City.

19.10 Termination of Disability Leave

An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Article 18.1.2.3, and of accrued vacation, and compensatory time off, with Workers' Compensation may be considered to have separated from City service. Prior to being separated from City service, each employee is eligible to participate in the City's return to work program.

- 19.10.1 An employee who exhausts all Disability Leave shall be notified that they are subject to the above provision upon expiration of all remaining paid leave. The employee shall also be notified of his/her eligibility to participate in the return to work program.

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CITY PROPOSAL #24- ADDITIONAL 5% TOTAL COMPENSATION REDUCTION (ONE-TIME)

ARTICLE 5 WAGES AND SPECIAL PAY

5.1.2 ADDITIONAL RETIREMENT CONTRIBUTION

Effective June 27, 2010 through June 28, 2011, all employees will make an additional retirement contribution in the amount of 7.5% of pensionable compensation, and the amounts so contributed will be applied to reduce the contributions that the City would otherwise be required to make during that time period for the pension unfunded liability, which includes the current service deficiency and prior service deficiency for basic retirement benefits and current service deficiency and prior service deficiency for the cost-of-living (COL) retirement benefit. This additional employee retirement contribution would be in addition to the employee retirement contribution rates that have been approved by the Federated City Employees' Retirement System Board. The intent of this additional retirement contribution by employees is to reduce the City's required pension retirement contribution rate by a commensurate 7.5% of pensionable compensation, as illustrated below:

Federated (Fiscal Year 2010-2011)			
	<u>City</u>	<u>Employee</u>	<u>Total</u>
<u>Current Contribution Rates</u>	29.59%	10.30%	39.89%
<u>Contribution Rates With Additional Employee Contributions</u>	22.09%	17.80%	39.89%

Note: Additional contributions made by employees do not affect the retiree healthcare rates.

These contributions shall be treated in the same manner as any other employee contributions. Accordingly, the intent of these additional payments will be made on a pre-tax basis through payroll deductions pursuant to IRS Code Section 414(h)(2) and will be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

In the event that the additional employee contributions are not implemented by June 27, 2010, the additional employee contribution will increase to make up for the missed contributions. For each pay period commencing after June 27, 2010, in which the additional employee contribution rate is not increased, the additional dollar amount that would have been contributed had the increased rate been implemented on June 27, 2010, will be divided by the number of missed pay periods and that amount will be collected over the same number of pay periods after the increased rate has been implemented.

For example, if the additional contributions do not begin until August 22, 2010 (pay period #18) the employee contributions for each of the subsequent four (4) pay periods would include both the contribution for the current pay period and a contribution for one (1) missed pay period.

The parties understand that in order to implement this provision, an amendment must be made to the Federated City Employees' Retirement System that requires an ordinance amending the San Jose Municipal Code. In addition, the parties understand that the City will request that the Federated City Employees'

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Retirement System Board have its actuary confirm that an increase of the employee contribution of 7.5% will reduce the City's contribution rate by 7.5%.

In the event that these additional employee retirement contributions are not implemented for any reason by September 1, 2010, or are ceased for any reason thereafter, or the Federated City Employees' Retirement System Board's actuary confirms that the City's contribution rate could not be reduced by the same 7.5%, no additional employee contributions shall be required and the equivalent amount of 5% of total compensation would be taken as a temporary base pay reduction with retroactive deductions taken as described above.